

AMENDED IN ASSEMBLY FEBRUARY 28, 2007

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 102

Introduced by Assembly Member Ma
(Coauthor: Senator Romero)

January 3, 2007

An act to amend Section ~~355 of the Family Code, and 1279.6 of the Code of Civil Procedure, to amend Sections 298, 298.5, 355, and 358 of, and to add Sections 298.6 and 306.5 to, the Family Code, to amend Sections 103175 and 103180 of the Health and Safety Code, relating to marriage and to amend Section 12800.7 of the Vehicle Code, relating to name changes.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 102, as amended, Ma. Marriage: ~~licenses; domestic partnerships; name.~~

(1) Existing law provides for the registration of domestic partnerships and requires 2 persons desiring to become domestic partners to complete and file a Declaration of Domestic Partnership with the Secretary of State. Existing law requires the Secretary of State to prepare the form for the Declaration of Domestic Partnership pursuant to specified requirements.

This bill would require the Declaration of Domestic Partnership form to contain spaces for either party or both parties to indicate a change in surname. The bill would allow one party or both parties to a registered domestic partnership to elect to change the surname by which that party wishes to be known after registration of the domestic partnership by entering the new surname in the space provided on the Declaration of Domestic Partnership form.

(2) *Existing law requires the Secretary of State to register the Declaration of Domestic Partnership in a registry for those partnerships and to return certain documents to the registrants, including a Certificate of Registered Domestic Partnership, except as specified.*

This bill would require that the Certificate of Registered Domestic Partnership include the name used by each party before registration of the domestic partnership and any new surname.

Existing

(3) *Existing law requires that, before entering into or declaring a marriage, the parties first obtain a marriage license from a county clerk. Existing law requires the State Department of Public Health to prescribe the forms for the marriage license.*

This bill would allow one party or both parties to a marriage to elect to change the surname by which that party wishes to be known after solemnization of the marriage. The bill would require that the forms for the marriage license contain spaces for either party to indicate a change in his or her last name to his or her spouse's last name surname and would allow either party to change his or her surname by entering the new surname in the space provided on the marriage license application.

(4) *Existing law requires the State Department of Public Health to prepare and publish a brochure containing specified information for distribution to applicants for marriage licenses and persons who qualify as domestic partners.*

This bill would require that the above brochure contain information concerning options for changing a surname upon solemnization of marriage or upon registration of a domestic partnership.

Existing

(5) *Existing law, effective January 1, 2008, requires that a marriage license contain certain information, including the maiden name of the parties' mothers and the maiden name of the female, if previously married.*

~~This bill would require, instead, that a marriage license include the name used prior to marriage by each party who was previously married and whose name has been changed.~~

Existing law requires that each marriage performed be registered by the person performing the ceremony. Existing law creates an exemption from this requirement for members of a religious society or denomination not having clergy. Existing law requires those persons to file a License and Certificate of Declaration of Marriage containing

specified information, including the maiden name of the *parties' mothers and the maiden name of the female*, if previously married and if her name has been changed.

~~This bill would require, instead, that the certificate include the name used prior to marriage by each party who was previously married and whose name has been changed~~ *modify the provisions relating to marriage licenses and Licenses and Certificates of Declaration of Marriage to conform with the above provisions allowing either party to a marriage to change his or her surname. The bill would require that a marriage license and a License and Certificate of Declaration of Marriage include the surnames at birth of each party's parents and any new surname selected by a party for use upon solemnization of the marriage.*

By requiring counties to alter their forms to conform with these requirements, the bill would impose a state-mandated local program.

(6) *Existing law prohibits a person engaged in a trade or business of any kind or in the provision of a service of any kind from refusing to do business with, refusing to provide the service to, or imposing, as a condition of doing business with or providing the service to, a woman in connection with her use of her birth name or former name.*

This bill would extend these protections to any person, and would apply them, in addition, to a person's use of a surname adopted upon solemnization of marriage or registration of domestic partnership.

(7) *Existing law provides that, upon application for an original or duplicate driver's license, the Department of Motor Vehicles may require the applicant to produce any identification that it determines is necessary in order to ensure that the name of the applicant stated in the application is his or her true, full name and that his or her residence address as set forth in the application is his or her true residence address.*

This bill would provide that documents acceptable as identification that ensures the truth of an applicant's full name pursuant to those provisions shall include, but not be limited to, a copy of a Certificate of Registered Domestic Partnership or a copy of a marriage license or certificate.

~~This~~

(8) *This bill would make other technical, nonsubstantive changes.*

~~The~~

(9) *The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

1 *SECTION 1. This act shall be known and may be cited as the*
2 *Name Equality Act of 2007.*

3 *SEC. 2. (a) The Legislature finds and declares that the choice*
4 *to adopt or not adopt a new surname upon marriage or registration*
5 *of domestic partnership is a profoundly personal reflection of*
6 *one's individuality, equality, family, community, and beliefs.*

7 *(b) The Legislature, in enacting this act, intends to do both of*
8 *the following:*

9 *(1) Ensure that all men and women are treated equally with*
10 *regard to the option of changing or not changing their surnames*
11 *upon marriage or registration of domestic partnership.*

12 *(2) Clarify the option under existing law to adopt or not adopt*
13 *a new surname upon marriage or registration of domestic*
14 *partnership without being required to file an application for a*
15 *change of name with a superior court pursuant to Title 8*
16 *(commencing with Section 1275) of Part 3 of the Code of Civil*
17 *Procedure.*

18 *SEC. 3. Section 1279.6 of the Code of Civil Procedure is*
19 *amended to read:*

20 1279.6. No person engaged in a trade or business of any kind
21 or in the provision of a service of any kind shall do any of the
22 following:

23 (a) Refuse to do business with a ~~woman~~ person, or refuse to
24 provide the service to a ~~woman~~ person, regardless of ~~her~~ the
25 person's marital status, because *he or* she has chosen to use or
26 regularly uses *his or* her birth name ~~or~~, former name, or surname
27 *adopted upon solemnization of marriage or registration of domestic*
28 *partnership.*

29 (b) Impose, as a condition of doing business with a ~~woman~~
30 person, or as a condition of providing the service to a ~~woman~~

1 ~~person~~, a requirement that the ~~woman~~ *person*, regardless of *his or*
2 *her* marital status, use a name other than *his or her* birth name ~~or,~~
3 ~~former name, or surname adopted upon solemnization of marriage~~
4 ~~or registration of domestic partnership, if she the person has~~
5 chosen to use or regularly uses ~~her birth name or former~~ *that* name.

6 SEC. 4. Section 298 of the Family Code is amended to read:

7 298. (a) (1) The Secretary of State shall prepare forms entitled
8 “Declaration of Domestic Partnership” and “Notice of Termination
9 of Domestic Partnership” to meet the requirements of this division.
10 These forms shall require the signature and seal of an
11 acknowledgment by a notary public to be binding and valid.

12 (2) When funding allows, the Secretary of State shall include
13 on the form notice that a lesbian, gay, bisexual, and transgender
14 specific domestic abuse brochure is available upon request.

15 (b) (1) The Secretary of State shall distribute these forms to
16 each county clerk. These forms shall be available to the public at
17 the office of the Secretary of State and each county clerk.

18 (2) The Secretary of State shall, by regulation, establish fees
19 for the actual costs of processing each of these forms, and the cost
20 for preparing and sending the mailings and notices required
21 pursuant to Section 299.3, and shall charge these fees to persons
22 filing the forms.

23 (3) There is hereby established a fee of twenty-three dollars
24 (\$23) to be charged in addition to the existing fees established by
25 regulation to persons filing domestic partner registrations pursuant
26 to Section 297 for development and support of a lesbian, gay,
27 bisexual, and transgender curriculum for training workshops on
28 domestic violence, conducted pursuant to Section 13823.15 of the
29 Penal Code, and for the support of a minigrant program to promote
30 healthy nonviolent relationships in the lesbian, gay, bisexual, and
31 transgender community. This paragraph shall not apply to persons
32 of opposite sexes filing a domestic partnership registration and
33 who meet the qualifications described in subparagraph (B) of
34 paragraph (5) of subdivision (b) of Section 297.

35 (4) The fee established by paragraph (3) shall be deposited in
36 the Equality in Prevention and Services for Domestic Abuse Fund,
37 which is hereby established. The fund shall be administered by
38 the Office of Emergency Services, and expenditures from the fund
39 shall be used to support the purposes of paragraph (3).

(c) The Declaration of Domestic Partnership shall require each person who wants to become a domestic partner to (1) state that he or she meets the requirements of Section 297 at the time the form is signed, (2) provide a mailing address, (3) state that he or she consents to the jurisdiction of the Superior Courts of California for the purpose of a proceeding to obtain a judgment of dissolution or nullity of the domestic partnership or for legal separation of partners in the domestic partnership, or for any other proceeding related to the partners' rights and obligations, even if one or both partners ceases to be a resident of, or to maintain a domicile in, this state, (4) sign the form with a declaration that representations made therein are true, correct, and contain no material omissions of fact to the best knowledge and belief of the applicant, and (5) have a notary public acknowledge his or her signature. Both partners' signatures shall be affixed to one Declaration of Domestic Partnership form, which form shall then be transmitted to the Secretary of State according to the instructions provided on the form. Filing an intentionally and materially false Declaration of Domestic Partnership shall be punishable as a misdemeanor.

(d) The Declaration of Domestic Partnership shall contain spaces for either party or both parties to indicate a change in surname pursuant to Section 298.6.

SEC. 5. Section 298.5 of the Family Code is amended to read:

298.5. (a) Two persons desiring to become domestic partners may complete and file a Declaration of Domestic Partnership with the Secretary of State.

(b) The Secretary of State shall register the Declaration of Domestic Partnership in a registry for those partnerships, and shall return a copy of the registered form and a Certificate of Registered Domestic Partnership, and except for those opposite sex domestic partners who meet the qualifications described in subparagraph (B) of paragraph (5) of subdivision (b) of Section 297, a copy of the brochure that is made available to county clerks and the Secretary of State by the State Department of Health Services pursuant to Section 358 and distributed to individuals receiving a confidential marriage license pursuant to Section 503, to the domestic partners at the mailing address provided by the domestic partners.

(c) The Certificate of Registered Domestic Partnership shall include the name used by each party before registration of the

1 *domestic partnership and the new surname, if any, selected by*
2 *each party upon registration of the domestic partnership.*

3 ~~(e)~~

4 *(d) No person who has filed a Declaration of Domestic*
5 *Partnership may file a new Declaration of Domestic Partnership*
6 *or enter a civil marriage with someone other than their registered*
7 *domestic partner unless the most recent domestic partnership has*
8 *been terminated or a final judgment of dissolution or nullity of the*
9 *most recent domestic partnership has been entered. This prohibition*
10 *does not apply if the previous domestic partnership ended because*
11 *one of the partners died.*

12 ~~(e)~~

13 *(e) When funding allows, the Secretary of State shall print and*
14 *make available upon request, pursuant to Section 358, a lesbian,*
15 *gay, bisexual, and transgender specific domestic abuse brochure*
16 *developed by the State Department of Health Services and made*
17 *available to the Secretary of State to domestic partners who qualify*
18 *pursuant to Section 297.*

19 *SEC. 6. Section 298.6 is added to the Family Code, to read:*

20 *298.6. (a) Parties to a registered domestic partnership shall*
21 *not be required to have the same name. Neither party shall be*
22 *required to change his or her surname. A person's surname shall*
23 *not change upon registration as a domestic partner unless that*
24 *person elects to change his or her surname pursuant to subdivision*
25 *(b).*

26 *(b) (1) One party or both parties to a registered domestic*
27 *partnership may elect to change the surname by which that party*
28 *wishes to be known after registration of the domestic partnership*
29 *by entering the new surname in the space provided on the*
30 *Declaration of Domestic Partnership form.*

31 *(2) A person may adopt any surname pursuant to paragraph*
32 *(1), including, but not limited to, the surname of the other domestic*
33 *partner, any former surname of either domestic partner, a name*
34 *combining into a single surname all or a segment of the surname*
35 *or any former surname of either domestic partner, or a hyphenated*
36 *combination of surnames.*

37 *(3) (A) An election by a person to change his or her name*
38 *pursuant to paragraph (1) shall serve as a record of the surname*
39 *change. The Certificate of Registered Domestic Partnership*
40 *containing the new surname, or retaining the former surname,*

1 shall constitute proof that the use of the new surname or retention
2 of the former surname is lawful.

3 (B) A copy of a Certificate of Registered Domestic Partnership
4 shall be accepted as identification establishing a surname for
5 purposes of Section 12800.7 of the Vehicle Code.

6 (4) The adoption of a new surname, or the choice not to adopt
7 a new surname, by means of a Declaration of Domestic Partnership
8 pursuant to paragraph (1) shall not abrogate the right of either
9 party to adopt a different surname through usage at a future date,
10 or to petition the superior court for a change of name pursuant to
11 Title 8 (commencing with Section 1275) of Part 3 of the Code of
12 Civil Procedure.

13 (c) Nothing in this section shall be construed to abrogate the
14 common law right of any person to change his or her name, or the
15 right of any person to petition the superior court for a change of
16 name pursuant to Title 8 (commencing with Section 1275) of Part
17 3 of the Code of Civil Procedure.

18 SEC. 7. Section 306.5 is added to the Family Code, to read:

19 306.5. (a) Parties to a marriage shall not be required to have
20 the same name. Neither party shall be required to change his or
21 her surname. A person's surname shall not change upon marriage
22 unless that person elects to change his or her surname pursuant
23 to subdivision (b).

24 (b) (1) One party or both parties to a marriage may elect to
25 change the surname by which that party wishes to be known after
26 solemnization of the marriage by entering the new surname in the
27 space provided on the marriage license application.

28 (2) A person may adopt any surname pursuant to paragraph
29 (1), including, but not limited to, the surname of the other spouse,
30 any former surname of either spouse, a name combining into a
31 single surname all or a segment of the surname or any former
32 surname of either spouse, or a hyphenated combination of
33 surnames.

34 (3) (A) An election by a person to change his or her name
35 pursuant to paragraph (1) shall serve as a record of the surname
36 change. A marriage license or certificate containing the new
37 surname, or retaining the former surname, shall constitute proof
38 that the use of the new surname or retention of the former surname
39 is lawful.

1 (B) A copy of a marriage license or certificate shall be accepted
2 as identification establishing a surname for purposes of Section
3 12800.7 of the Vehicle Code.

4 (4) The adoption of a new surname, or the choice not to adopt
5 a new surname, by means of a marriage license application
6 pursuant to paragraph (1) shall not abrogate the right of either
7 party to adopt a different surname through usage at a future date,
8 or to petition the superior court for a change of name pursuant to
9 Title 8 (commencing with Section 1275) of Part 3 of the Code of
10 Civil Procedure.

11 (c) Nothing in this section shall be construed to abrogate the
12 common law right of any person to change his or her name, or the
13 right of any person to petition the superior court for a change of
14 name pursuant to Title 8 (commencing with Section 1275) of Part
15 3 of the Code of Civil Procedure.

16 ~~SECTION 4.~~

17 SEC. 8. Section 355 of the Family Code, as amended by Section
18 11 of Chapter 816 of the Statutes of 2006, is amended to read:

19 355. (a) The forms for the marriage license shall be prescribed
20 by the State Department of Public Health, and shall be adapted to
21 set forth the facts required in this part.

22 (b) The marriage license shall include an affidavit, which the
23 applicants shall sign, affirming that they have received the brochure
24 provided for in Section 358. If the marriage is to be entered into
25 pursuant to subdivision (b) of Section 420, the attorney in fact
26 shall sign the affidavit on behalf of the applicant who is overseas.

27 (c) The forms for the marriage license shall contain spaces for
28 ~~either party to indicate a change in his or her last name to the last~~
29 ~~name of his or her spouse; either party or both parties to indicate~~
30 a change in surname pursuant to Section 306.5.

31 SEC. 9. Section 358 of the Family Code is amended to read:

32 358. (a) The State Department of ~~Public Health Services~~ shall
33 prepare and publish a brochure that shall contain the following:

34 (1) Information concerning the possibilities of genetic defects
35 and diseases and a listing of centers available for the testing and
36 treatment of genetic defects and diseases.

37 (2) Information concerning acquired immunodeficiency
38 syndrome (AIDS) and the availability of testing for antibodies to
39 the probable causative agent of AIDS.

(3) Information concerning domestic violence, including resources available to victims and a statement that physical, emotional, psychological, and sexual abuse, and assault and battery, are against the law.

(4) *Information concerning options for changing a surname upon solemnization of marriage pursuant to Section 306.5, or upon registration of a domestic partnership pursuant to Section 298.6.*

(b) The State Department of *Public Health Services* shall make the brochures available to county clerks who shall distribute a copy of the brochure to each applicant for a marriage license, including applicants for a confidential marriage license and notaries public receiving a confidential marriage license pursuant to Section 503. The department shall also make the brochure available to the Secretary of State, who shall distribute a copy of the brochure to persons who qualify as domestic partners pursuant to Section 297 *and shall make the brochure available electronically on the Internet Web site of the Secretary of State.*

(c) The department shall prepare a lesbian, gay, bisexual, and transgender specific domestic abuse brochure and make the brochure available to the Secretary of State who shall print and make available the brochure, as funding allows, pursuant to Section 298.5.

(d) Each notary public issuing a confidential marriage license under Section 503 shall distribute a copy of the brochure to the applicants for a confidential marriage license.

(e) To the extent possible, the State Department of *Public Health Services* shall seek to combine in a single brochure all statutorily required information for marriage license applicants.

~~SEC. 2.~~

SEC. 10. Section 103175 of the Health and Safety Code, as amended by Section 46 of Chapter 816 of the Statutes of 2006, is amended to read:

103175. (a) The marriage license shall contain as nearly as can be ascertained all of the following and other items as the State Registrar may designate:

(1) The first section shall include the personal data of each party married, including the date of birth, full given name at birth or by court order, birthplace, mailing address, names and birthplaces of each party's parents, ~~maiden name of each party's mother~~ *surnames at birth of each party's parents*, the number of previous marriages,

1 marital status,~~and~~ the name used prior to marriage by each party
2 who was previously married and whose name has been changed,
3 *and the new surname, if any, selected by each party for use upon*
4 *solemnization of the marriage.*

5 (2) The second section shall include the signatures of parties
6 married, license to marry, county and date of ~~issue~~ *issuance* of
7 license, and the marriage license number.

8 (3) The third section shall include the certification of one person
9 performing the ceremony, that shall show his or her official
10 position including the denomination if he or she is a clergy or
11 clergyperson, and the printed name, signature, and mailing address
12 of at least one, and no more than two, witnesses to the marriage
13 ceremony. The person performing the marriage ceremony shall
14 also type or print his or her name and mailing address on the
15 marriage license.

16 (b) The marriage license shall not contain any reference to the
17 race or color of parties married.

18 ~~SEC. 3.~~

19 *SEC. 11.* Section 103180 of the Health and Safety Code, as
20 amended by Section 47 of Chapter 816 of the Statutes of 2006, is
21 amended to read:

22 103180. (a) Sections 103150 and 103175 do not apply to
23 marriages entered into pursuant to Section 307 of the Family Code.
24 Subdivisions (b) and (c) govern the registration and the content of
25 the License and Certificate of Declaration of Marriage of those
26 marriages.

27 (b) Each marriage entered into pursuant to Section 307 of the
28 Family Code shall be registered by the parties entering into the
29 marriage or by a witness who signed under paragraph (2) of
30 subdivision (a) of Section 307 within 10 days after the ceremony
31 with the local registrar of marriages for the county in which the
32 License and Certificate of Declaration of Marriage was issued.

33 (c) The License and Certificate of Declaration of Marriage
34 entered into pursuant to Section 307 of the Family Code shall
35 contain as nearly as can be ascertained the following:

36 (1) The personal data of each party married, including the date
37 of birth, full given name at birth or by court order, birthplace,
38 mailing address, names and birthplaces of each party's parents,
39 ~~maiden name of each party's mother~~ *surnames at birth of each*
40 *party's parents*, the number of previous marriages, marital status,

1 ~~and~~ the name used prior to marriage by each party who was
2 previously married and whose name has been changed, *and the*
3 *new surname, if any, selected by each party for use upon*
4 *solemnization of the marriage.*

5 (2) The license to marry.

6 (3) The county and date of issuance of the license.

7 (4) The marriage license number.

8 (5) The certification of the parties entering into the marriage,
9 that shall show the following:

10 (A) The fact, time, and place of entering into the marriage.

11 (B) The printed name, signature, and mailing address of two
12 witnesses to the marriage ceremony.

13 (C) The religious society or denomination of the parties married,
14 and that the marriage was entered into in accordance with the rules
15 and customs of that religious society or denomination.

16 (6) The signatures of the parties married.

17 (7) Any other items that the State Registrar shall designate.

18 (d) The License and Certificate of Declaration of Marriage shall
19 not contain any reference to the race or color of parties married or
20 to a person performing or solemnizing the marriage.

21 *SEC. 12. Section 12800.7 of the Vehicle Code is amended to*
22 *read:*

23 12800.7. (a) Upon application for an original or duplicate
24 license, the department may require the applicant to produce any
25 identification that it determines is necessary in order to ensure that
26 the name of the applicant stated in the application is his or her true,
27 full name and that his or her residence address as set forth in the
28 application is his or her true residence address.

29 (b) *Documents acceptable as identification that ensures the*
30 *truth of an applicant's full name pursuant to subdivision (a) shall*
31 *include, but not be limited to, any of the following:*

32 (1) *A copy of a Certificate of Registered Domestic Partnership*
33 *issued pursuant to Division 2.5 (commencing with Section 297) of*
34 *the Family Code.*

35 (2) *A copy of a marriage license or certificate issued pursuant*
36 *to Division 3 (commencing with Section 300) of the Family Code.*

37 ~~SEC. 4.~~

38 *SEC. 13.* No reimbursement is required by this act pursuant to
39 Section 6 of Article XIII B of the California Constitution because
40 a local agency or school district has the authority to levy service

- 1 charges, fees, or assessments sufficient to pay for the program or
- 2 level of service mandated by this act, within the meaning of Section
- 3 17556 of the Government Code.

O